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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,098	10/30/2007	Mansour Samadpour	66090-004US0	3434
22504 7590 06/23/2011 DAVIS WRIGHT TREMAINE, LLP/Seattle 1201 Third Avenue, Suite 2200 SEATTLE, WA 98101-3045				
EXAMINER				
HENKEL, DANIELLE B				
ART UNIT		PAPER NUMBER		
1775				
NOTIFICATION DATE		DELIVERY MODE		
06/23/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

seapatentdocket@dw.com

### Office Action Summary

**Application No.**

10/584,098

**Applicant(s)**

SAMADPOUR, MANSOUR

**Examiner**

DANIELLE HENKEL

**Art Unit**

1775

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. The amendment filed 4/6/11 has been entered and fully considered.
2. Claims 1-8, and 11-20 remain pending.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-8 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over BRADLEY (US 2004/0107782) in view of GILBERT (US 6338282) and in view of ORNATH (US 2006/0060006).

a. With respect to claim 1, BRADLEY discloses a portable containment sampling system for sampling contaminants (microbial organisms) from a number of different matrices (present on surfaces) (0017) comprising: a reservoir suitable for providing rinse solution (microbial collection fluid) (0025); a collection unit (sample collection chamber) capable of being sterilized (0018); a handheld sampling tool (integrated collection fluid delivery and collection fluid recovery member) with fluid delivery and recovery channels capable of being sterilized (0019, 0025), configured to deliver solution (collection fluid) into a sampling area (target surface), and contemporaneously evacuate material from the sampling area (delivered fluid from the surface) (0030-31); a rinse solution tube with a rinse solution pump (delivery means), for transferring the solution from the reservoir to the sampling tool (in communication with both the reservoir and the integrated member, and operable to aseptically deliver collection fluid from the reservoir to the integrated member) (0025); and an air pump (vacuum means) configured for drawing in a sample and transporting the sample to the collection unit (in communication with both the sample collection chamber and the integrated member, and operable to direct collection fluid, delivered and

recovered by the integrated member, to the sample collection chamber) (0019). BRADLEY discloses the claimed invention except for the sampling tool member being reversibly detachable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tool member detachable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichmena*, 168 USPQ 177, 179. In addition GILBERT discloses a sampling system comprising a sample collection chamber, vacuum and sample intake (sampling member) that is reversibly detachable (Column 7, lines 33-47 and Column 8, lines 4-13). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of BRADLEY to include the sampling tool being sterilizable and reversibly detachable as taught by GILBERT because it allows for the removal of the sample intake in order to clean it such as by autoclaving (sterilizable) and for preventing cross contamination (Column 7, lines 33-47 and Column 8, lines 4-13, Column 1, lines 30-51). BRADLEY discloses a washing and cleaning (sanitizing means) for the sample tool (0072), and GILBERT discloses autoclaving (sanitizing) a sampling member (Column 8, lines 4-13), but does not explicitly disclose a reservoir and pump to circulate sanitizing fluid through the collection tool. However, ORNATH discloses a contaminant scanning system for collecting vapors via vacuum comprising a sample inlet tube 122 (collection) and fluid delivery tube, 132 and cleaning system 138 which has a reservoir for heated detergent, solvent, or aerosol, (sanitizing fluid) in which the

fluid is injected (pump) from the reservoir through the delivery and collection tubes to providing for cleaning of the sampling member (0065-0066). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of BRADLEY and GILBERT to include the sanitizing means as taught by ORNATH because it allows for the device to be cleaned after each use in which a contaminant vapor was detected, to prevent cross-contamination (0063).

b. With respect to claim 2, BRADLEY discloses the claimed invention except for the sampling tool member being reversibly detachable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tool member detachable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichmena*, 168 USPQ 177, 179. In addition GILBERT discloses a sampling system comprising a sample collection chamber, vacuum and sample intake (sampling member) that is reversibly detachable (Column 7, lines 33-47 and Column 8, lines 4-13). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of BRADLEY to include the sampling tool being sterilizable and reversibly detachable as taught by GILBERT because it allows for the removal of the sample intake in order to clean it such as by autoclaving (sterilizable) and for preventing cross contamination (Column 7, lines 33-47 and Column 8, lines 4-13, Column 1, lines 30-51).

- c. With respect to claim 3, BRADLEY discloses the reservoir is a pressurized container (0025).
- d. With respect to claim 4, BRADLEY discloses the reservoir is a pressurized container (0025) and that the rinse solution pump is pressurized air and rinse solution (0025).
- e. With respect to claim 5, BRADLEY discloses the delivery means comprises a fluid pump (0025).
- f. With respect to claim 6, BRADLEY discloses the vacuum means is an air pump that draws the sample in (vacuum) with a liquid trap between the collection unit and air pump (0026).
- g. With respect to claim 7, BRADLEY discloses the sampling tool has a spray nozzle that disperses rinse material within an area of the tool (0035).
- h. With respect to claim 8, BRADLEY discloses the sampling tool comprises an actuable valve for delivering rinse fluid (0027).
- i. With respect to claim 11, BRADLEY discloses the sampling tool head conforms to sample spherically shaped items (to target surface contour) (0037).
- j. With respect to claim 12, BRADLEY discloses the shape or size of the sampling tool head is varied (calibrated) dependent upon specific characteristics of the area being sampled (0037).
- k. With respect to claim 13, BRADLEY discloses a method for sampling surfaces comprising delivering a rinse solution (collection fluid) to a surface and contemporaneously evacuating the material from the sampling area to a

collection chamber by means of a sampling tool (integrated collection fluid delivery and collection fluid recovery member) (0030) with fluid delivery and recovery channels capable of being sterilized (0019, 0025). BRADLEY discloses the claimed invention except for the sampling tool member being reversibly detachable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tool member detachable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichmena*, 168 USPQ 177, 179. In addition GILBERT discloses a sampling system comprising a sample collection chamber, vacuum and sample intake (sampling member) that is reversibly detachable (Column 7, lines 33-47 and Column 8, lines 4-13). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of BRADLEY to include the sampling tool being sterilizable and reversibly detachable as taught by GILBERT because it allows for the removal of the sample intake in order to clean it such as by autoclaving (sterilizable) and for preventing cross contamination (Column 7, lines 33-47 and Column 8, lines 4-13, Column 1, lines 30-51). BRADLEY discloses a washing and cleaning (sanitizing means) for the sample tool (0072), and GILBERT discloses autoclaving (sanitizing) a sampling member (Column 8, lines 4-13), but does not explicitly disclose a reservoir and pump to circulate sanitizing fluid through the collection tool. However, ORNATH discloses a contaminant scanning system for collecting vapors via vacuum comprising a sample inlet tube 122



(collection) and fluid delivery tube, 132 and cleaning system 138 which has a reservoir for heated detergent, solvent, or aerosol, (sanitizing fluid) in which the fluid is injected (pump) from the reservoir through the delivery and collection tubes to providing for cleaning of the sampling member (0065-0066). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of BRADLEY and GILBERT to include the sanitizing means as taught by ORNATH because it allows for the device to be cleaned after each use in which a contaminant vapor was detected, to prevent cross-contamination (0063).

l. With respect to claim 14, BRADLEY discloses the target surface is a food surface or food contact surface (0012).

m. With respect to claim 15, BRADLEY discloses the food surface is that of an animal carcass (0012).

n. With respect to claim 16, BRADLEY discloses the carcass is hog or beef (0073).

o. With respect to claim 17, BRADLEY discloses the rinse fluid preserves vitality without promoting growth for detection methods (0040).

p. With respect to claim 18, BRADLEY discloses the rinse fluid promotes culturing (growth) for detection methods (0040).

q. With respect to claim 19, BRADLEY discloses the collection unit comprises a diffuser tube to provide an impinger (0023-24).

r. With respect to claim 20, BRADLEY discloses a method of sampling comprising collecting a gas sample by means of a sampling tool (integrated collection fluid delivery and recovery member) with fluid delivery and recovery channels capable of being sterilized (0019, 0025) in communication with an air pump (vacuum) drawing in air; and directing the sample into an impinger comprised of a collection unit having a tube (diffuser tube) allowing atmospheric sampling (0023-24, 0072). BRADLEY discloses the claimed invention except for the sampling tool member being reversibly detachable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the tool member detachable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichmena*, 168 USPQ 177, 179. In addition GILBERT discloses a sampling system comprising a sample collection chamber, vacuum and sample intake (sampling member) that is reversibly detachable (Column 7, lines 33-47 and Column 8, lines 4-13). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of BRADLEY to include the sampling tool being sterilizable and reversibly detachable as taught by GILBERT because it allows for the removal of the sample intake in order to clean it such as by autoclaving (sterilizable) and for preventing cross contamination (Column 7, lines 33-47 and Column 8, lines 4-13, Column 1, lines 30-51). BRADLEY discloses a washing and cleaning (sanitizing means) for the sample tool (0072), and GILBERT discloses autoclaving (sanitizing) a sampling

member (Column 8, lines 4-13), but does not explicitly disclose a reservoir and pump to circulate sanitizing fluid through the collection tool. However, ORNATH discloses a contaminant scanning system for collecting vapors via vacuum comprising a sample inlet tube 122 (collection) and fluid delivery tube, 132 and cleaning system 138 which has a reservoir for heated detergent, solvent, or aerosol, (sanitizing fluid) in which the fluid is injected (pump) from the reservoir through the delivery and collection tubes to providing for cleaning of the sampling member (0065-0066). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of BRADLEY and GILBERT to include the sanitizing means as taught by ORNATH because it allows for the device to be cleaned after each use in which a contaminant vapor was detected, to prevent cross-contamination (0063).

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection in view of ORNATH and GILBERT addressed above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE HENKEL whose telephone number is (571)270-5505. The examiner can normally be reached on Mon-Thur: 11am-8pm, Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on 571-272-1374. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DANIELLE HENKEL/  
Examiner, Art Unit 1775

/Michael A Marcheschi/  
Supervisory Patent Examiner, Art  
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